IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.876 OF 2003

Ashok Anant Wagh
Age: 28 years,
Occ: Agriculture
R/at Vagahchiwadi,
Tal. Panvel,
District: Raigad ...Appellant.

V/s

State of Maharashtra ...Respondent.

Mr. Ganesh Gole for the appellant.

Mr. B.H. Mehta, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 29th October, 2004

ORAL JUDGMENT:

1. Appellant is challenging the Judgment and Order passed by the Ist Ad-hoc Additional Sessions Judge, Raigad in Sessions Case No.113 of 2002. By the said Judgment and Order, the Trial Court convicted the accused for the offence punishable under section 307 of the Indian Penal Code and sentenced him to suffer R.I. for 10 years and to pay fine of Rs 2,000/- and, in default, to suffer R.I. for one year. Accused No.2 was acquitted and was not found guilty of the offence punishable under section 307 read with section 34 of the Indian Penal Code.

2. Prosecution's case in brief is that one Yamunabai Raghunath Hambir wife of deceased Raghunath was residing in village Bhoj. On 31/3/2002, at about 3.00 P.M. when Yamunabai was returning home with her husband Raghunath, they met accused No.2 - Ramesh who was related to Yamunabai. After having travelled with Ramesh for some distance, they met accused No.1 - Ashok who was sitting under tree and he had a wooden log in his hand. Accused No.1 demanded water from them. Deceased Raghunath also drank water and while Yamnunabai was drinking water, accused No.1 inflicted blow on the head of the deceased and, thereafter, gave 3/4 blows. He then dragged Raghunath by the side of the road, then uprooted the creeper and he tied it around the neck of her husband Raghunath and tried to strangulate Raghunath. Yamunabai then went to her parents house, informed the incident to her uncle and then all of them came to the spot. They found that Raghunath was unconscious and sustained bleeding injury on the head. He was taken to Kulgaon Police Station. Then he was taken to the hospital and, thereafter, Yamunabai lodged a complaint. Raghunath was admitted as an indoor patient on 29/2/2002. He was discharged on 31/5/2002. After the investigation was completed, a charge sheet was filed against the accused and the Trial Court convicted the accused

under section 307 read with section 34 of the Indian Penal Code.

3. Prosecution has examined P.W. 1 - Dr Mrs Sakhalkar, P.W.2 - Yamnunabai, widow of the deceased, P.W.3 - Balu Wagh, P.W. 4 - Dr Pathak, P.W. 5 - Suresh Chandane, A.S.I., P.W. 6 - Dr. Dinraj Kadlas and P.W. 7 - Investigating Officer P.S.I. Chikane. Prosecution also produced documentary evidence i.e. the spot panchanama, memorandum of panchanama regarding attachment of clothes, medical certificate and case papers. P.W.1 - Dr. Mrs Sakhalkar has stated in her evidence that there were five contused lacerated wounds on the head. Dr. Pathak who was attached to Civil Hospital, Thane has noted that there were six injuries and one injury in the form of legature mark encircling neck of Raghunath. He has stated that the patient was discharged on 31/5/2002 after two months and, at the time of discharge, the patient was fully conscious. His evidence is corroborated by P.W. 6 - Dr. Kadlas. P.W.2 - Yamunabai has stated in her evidence the sequence of events as they transpired on the date of the incident and has narrated how accused No.1 assaulted her husband on his head with a wooden log and, thereafter, gave 4/5 blows with the said wooden log and how the

accused dragged the deceased by the side of the road and tied a creeper around his neck and attempted to strangulate her husband. Her evidence has not been shaken in the cross examination. Though the panch witness has turned hostile, the evidence of P.W.2 is fully corroborated by the evidence of the doctor. Prosecution has also relied on the statement of Raghunath which was recorded by P.W. 5 - A.S.I. Suresh Chandane, after he returned home after taking discharge from the hospital. Raghunath could not be examined as witness as he died on 12/6/2002. It is not the case of the prosecution that Raghunath died as a result of injury which was caused by the assault. No evidence has been adduced by the prosecution to prove that the deceased Raghunath died as a result and consequence of the injuries which were inflicted by the accused. The fact remains that his statement was recorded after he was discharged from the hospital. In his statement also, he was corroborated by the statement of P.W.2. I do not see any reason to discard this evidence in the form of dying declaration only because no endorsement has been given by the Medical Officer regarding his physical and mental condition at the time when the statement was recorded and there is nothing to indicate that the Officer who recorded the said statement had any reason to believe

that Raghunath was likely to expire within a short period of one month. Therefore, in my view, the said statement is admissible under section 32(1) of the Indian Evidence Act. In my view, there is sufficient evidence on record to indicate that the accused had assaulted Raghunath.

4. The next question which falls for consideration is : whether the accused had committed an offence under section 307 of the Indian Penal Code or under section 324 of the Indian Penal Code? Considering the nature of injuries, in my view, it will have to be held that the accused had committed an offence under section 324 and not under section 307. Raghunath was discharged from the hospital and Dr Pathak has stated in his evidence that, at the time of discharge, Raghunath was physically and mentally fit. He regained consciousness on 3/4/2002. From the evidence of P.W.1 Dr Mrs Sakhalkar, it can be seen that there were five contused lacerated wounds on the person of the deceased and one legature mark on the neck. The injuries, in my view, at the best, can be said to be grievous hurt within the meaning of section 320 particularly in the 8th category of section 320 which reads as under:-

."**320. Grievous hurt.**- The following kinds of hurt only are designated as "grievous"

First - .....

Secondly - .....

Thirdly - .....

Fourtyhly- .....

Fifthly - .....

Sixthly - .....

Seventhly - .....

Eightly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

In my view, therefore, it cannot be said that the appellant had any intention of committing murder of Raghunath nor had appellant thought that the injury would be sufficient in the ordinary course of nature to cause death. The conviction, therefore, under section 307 is altered to section 324. Sentence of fine, however, is confirmed. Appellant is convicted and sentenced to the period which he had already undergone jail.

5. Accordingly, the following order is passed:-

O R D E R

. Appeal is partly allowed.

. The conviction under section 307 of the IPC is set aside. The appellant is convicted under section 324 of the IPC and is sentenced to undergo the period which he has already undergone in jail.

. The appellant to be released forthwith unless he is required in any other case.

V.M.KANADE,J.